2187.

SUPREME COURT OF THE UNITED STATES.

No. 125.

HENRY F. TURNER, JAMES F. PURVIS, AND STERLING THOMAS, PLAINTIFFS IN ERROR,

vs.

JOSEPH C. YATES.

IN ERROR TO THE CIRCUIT COURT, UNITED STATES, FOR THE DISTRICT OF MARYLAND.

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THE UNITED STATES OF AMERICA.
District of Maryland, to wit:

At a circuit court of the United States, for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore on the first Monday in April, in the year of our Lord one thousand eight hundred and fifty-two—

Present, the honorable John Glenn, judge of Maryland district; Z. Collins Lee, esq., attorney; Thomas H. Kent, (of Jos.,) esq., marshal; Thomas Spicer, clerk.

Among other were the following proceedings, to wit:

JOSEPH C. YATES
vs.
HARRY F. TURNER, James F. Purvis, Sterling Thomas.

Be it remembered that heretofore, to wit, on the eighteenth day of December, in the year of our Lord one thousand eight hundred and fifty, the said Joseph C. Yates, by S. Teackle Wallis, his attorney, prosecuted and sued forth, out of the circuit court here, the writ of the United States of America, of capias ad respondendum, directed to the marshal of the Maryland district, in the words, and of the tenor following, to wit:

Writ.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the marshal for Maryland district, greeting:

[L. S.] We command you that you take Harry F. Turner, James F. Purvis, and Sterling Thomas, citizens of the State of Maryland, if they shall be found in your district, and that them so taken you safe keep, so that you have their bodies before the judges of the circuit court of the United States, for the fourth circuit, in and for the Maryland district, at the United States court room in the city of Baltimore, on the first Monday in April next, to answer unto Joseph C. Yates, an alien and subject of her Majesty the Queen of the united kingdom of Great Britain and Ireland, of a plea that they render unto him the sum of twelve thousand dollars, which to him they owe, and from him unjustly detain, &c. Hereof fail not at your peril, and have you then and there this writ.

Witness the honorable R. B. Taney, chief justice of our Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty.

S. T. W. Issued 18th December, 1850.

THO. SPICER,
Clerk, circuit court.

And the said Joseph C. Yates, by his attorney aforesaid, on the day of prosecuting and suing forth the said writ, declared in the circuit court here against the said Harry F. Turner, James F. Purvis, and Sterling Thomas, in the plea aforesaid, as follows, to wit:

Declaration.

Circuit court of the United States, for the fourth circuit, in and for the district of Maryland.

MARYLAND DISTRICT, *to wit:*

Harry F. Turner, James F. Purvis, and Sterling Thomas, citizens of the State of Maryland, were summoned to answer unto Joseph C. Yates, an alien and subject of her Majesty, the Queen of the united kingdom of Great Britain and Ireland, of a plea that they render unto him the sum of twelve thousand dollars, which to him they owe, and from him unjustly detain, &c.

And whereupon the said plaintiff in this action, by S. Teackle Wallis, his attorney, says: That whereas the said defendants in this action, on the sixth day of November, in the year of our Lord eighteen hundred and forty-nine, at the district aforesaid, by their certain writing obligatory, sealed with their seals, (and to the court now here shown, whose date is the day and year aforesaid,) acknowledged themselves to be held and firmly bound, jointly and severally, to the said plaintiff, in the just and full sum of twelve thousand dollars, to be paid to the said plaintiff whenever afterwards they, the said defendants, should be thereto required; which said writing obligatory was or is subject to a certain condition there under written, whereby, after reciting to the effect following, to wit, that whereas the said plaintiff was about to lend and advance to William H. F. Turner the sum of twelve thousand dollars, in such sums, and at such times as the said William might designate and appoint; which designation and appointment, and advances, it was agreed should be evidenced by notes drawn by the said William in favor of the said Harry F. Turner, agent, and by the latter endorsed, or by drafts drawn by the said William in favor of the said Harry F. Turner, agent, on, and accepted or paid by, the said plaintiff, endorsed by the said Harry F.; and that the said Harry F. Turner, James F. Purvis, and Sterling Thomas, had agreed, as the consideration for the said loan, to secure to the said plaintiff the payment of the sum of six thousand dollars, and interest thereon, part of the said loan; and that the said Harry F. Turner, with Robert Turner and Absalom Hancock, had entered into a similar bond for the payment of the other six thousand dollars, and interest.

The condition of the said obligation was such, that if the said Wm. H. F. Turner did and should, at the expiration of twelve months from the date of said writing obligatory, pay to the said plaintiff, his executors, administrators, or assigns, all such sum or sums of money evidenced as aforesaid, or might then be owing to the said plaintiff by the said William H. F. Turner, or in case the said William H. F. Turner

should fail or omit to pay such sum or sums of money at said time, if the said Sterling Thomas and James F. Purvis, or either of them, should well and truly pay to the said plaintiff, his executors, administrators, or assigns, so much of said sum or sums of money as might then be owing, as should amount to six thousand dollars, and interest, in case so much should be owing, with full legal interest thereon, or such sum or sums of money as might be owing, with interest thereon; and in case the same should amount to less than six thousand dollars, then the said obligation was to be null and void, otherwise to remain in full force and virtue. Yet the said plaintiff avers that, after the execution of the said writing obligatory, he did lend and advance to the said William H. F. Turner the sum of twelve thousand dollars, in such sums, and at such times, as the said William designated and appointed; which designation and appointment, and advances, were evidenced by drafts drawn by said William H. F. Turner, in favor of said Harry F. Turner, agent, on, and accepted and paid by, said plaintiff, endorsed by said Harry F.; which said sum of twelve thousand *thousand* dollars, with interest thereon, evidenced as aforesaid, was owing to the said plaintiff by the said William H. F. Turner, at the expiration of twelve months from the date of said writing obligatory; that is to say, on the seventh day of November, eighteen hundred and fifty, yet the said William H. F. Turner did, then and there, fail and omit to pay the said sum of money, evidenced as aforesaid, and still continues so to do; and the said Sterling Thomas and James F. Purvis have not, nor has either of them, paid to the said plaintiff so much of said money as was then owing as amounted to six thousand dollars, and interest, although so much was and is owing, with full legal interest thereon; but the said defendants, although then, and often afterwards, requested, have not yet paid the said sum of money, or any part thereof, to the said plaintiff, nor has either of them; but hitherto have, and each of them has refused, and to pay the same to the said plaintiff do still refuse, to the damage of the said plaintiff twelve thousand dollars, and thereupon he brings suit, &c.

S. TEACKLE WALLIS,
Plaintiff's attorney.

Oyer.

Oyer of the writing obligatory. (Copy.) Stamp.

Know all men by these presents, that we, Harry F. Turner, Sterling Thomas, and James F. Purvis, are held and firmly bound unto Joseph C. Yates in the full and just sum of twelve thousand dollars, current money, to be paid to the said Yates, his executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, our, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this sixth day of November, in the year of our Lord one thousand eight hundred and forty-nine.

Whereas the said Joseph C. Yates is about to lend and advance to William H. F. Turner the sum of twelve thousand dollars, in such sums, and at such times, as the said William may designate and appoint; which designation, and appointment, and advances, it is hereby agreed shall be evidenced by notes drawn by the said William, in favor of the said Harry F. Turner, agent, and by the latter endorsed, or by drafts drawn by the said William H. F. Turner, in favor of the said Harry F. Turner, agent, on, and accepted or paid by, the said Yates, endorsed by said Harry F.

And whereas the said Harry F. Turner, Sterling Thomas, and James F. Purvis, have agreed, as the consideration for the said loan, to secure the said Yates the payment of the sum of six thousand dollars, and interest thereon, part of the said loan; and the said Harry F. Turner, with Robert Turner and Absalom Hancock, have entered into a bond similar to this, for the payment of the other six thousand dollars, and interest:

Now the condition of the above obligation is such, that if the said William H. F. Turner, at the expiration of twelve months from the date hereof, shall well and truly pay to the said Joseph C. Yates, his executors, administrators or assigns, all such sum or sums of money, as may be owing to the said Yates, by the said William H. F. Turner, evidenced as aforesaid, at the said expiration of the said twelve months, or in case the said William H. F. Turner should fail or omit to pay said sum or sums of money, at said time, if the said Sterling Thomas and James F. Purvis, or either of them, shall well and truly pay to the said Yates, his executors, administrators, or assigns, so much of said sum or sums of money as may then be owing, as shall amount to six thousand dollars and interest, in case so much be owing, with full legal interest thereon, or such sum or sums of money as may be owing with interest thereon, in case the same should amount to less than six thousand dollars, then this obligation to be null and void, otherwise to remain in full force and virtue in law.

HARRY F. TURNER, [SEAL.]
STERLING THOMAS, [SEAL.]
JAS. F. PURVIS. [SEAL.]

Signed, sealed, and delivered in presence of—
JOHN WM. MEDAIRY.

A copy of which said declaration and oyer was made and sent to the marshal for the Maryland district aforesaid, with the said writ thereon endorsed, to wit: "Debt, $12,000; copy nar. to be served on the defendants, with the writ." At which said first Monday in April, in the year of Lord one thousand eight hundred and fifty-one, being the day of the return of the foregoing writ, comes into the circuit court here the said Joseph C. Yates, by his attorney aforesaid, and the marshal of the Maryland district aforesaid, to wit, Thomas H. Kent (of Joseph,) gentleman, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit:

Cepi and bond.

Thos. H. Kent (of Joseph,) United States marshal.

And the said Thomas H. Kent, (of Joseph,) marshal of the Maryland district aforesaid, although solemnly called upon by order of the court here, on motion of the said Joseph C. Yates, by his attorney aforesaid, to bring into court here the bodies of the said Harry F. Turner, James F. Purvis, and Sterling Thomas, whom he ought to have here this day in pursuance of the command of the writ aforesaid, and according to the tenor of his return thereof as aforesaid, brings not into court here the said Harry F. Turner, James F. Purvis, and Sterling Thomas, but therein doth make default; whereupon, on motion of

Rule and amendment.

the said Joseph C. Yates by his attorney aforesaid, it is ruled by the court here, that the said Thomas H. Kent, (of Joseph,) marshal of the Maryland district aforesaid, be amerced the said sum of twelve thousand dollars, the debt aforesaid in the declaration of the said Joseph C. Yates, in the plea aforesaid, and the costs and charges that have accrued or may accrue in the plea aforesaid, in case he brings not into court here the bodies of the said Harry F. Turner, James F. Purvis, and Sterling Thomas, on the first Monday in November next; and the same day is given to the said Harry F. Turner, James F. Purvis, and Sterling Thomas also.

And the said Thomas H. Kent, (of Jos.,) marshal of the Maryland district aforesaid, in pursuance of the command of the writ aforesaid, and according to the tenor of his return thereof as aforesaid, and in compliance with the rule of the court aforesaid, and to save the amerciament aforesaid, brings into court here the bodies of the said Harry F. Turner, James F. Purvis, and Sterling Thomas.

Amerciament stricken out.

Whereupon it is ordered by the court here, that the rule and amerciament aforesaid be stricken out.

And thereupon the said Harry F. Turner, James F. Purvis, and Sterling Thomas appear in court here by William J. Ward, their attorney.

Rule of special bail.

And thereupon, on motion of the said Joseph C. Yates, by his attorney aforesaid, it is ruled by the court here that the said Harry F. Turner, James F. Purvis, and Sterling Thomas give special bail in the plea aforesaid.

Special bail entered.

Whereupon a certain William Price, of the district aforesaid, comes

here into court, in his own proper person, and being thereunto required by the said Joseph C. Yates, by his attorney aforesaid, makes oath that he is a housekeeper, and that he is worth double the sum for which he is intended to be bail, after payment of all his debts.

Thereupon the said William Price becomes pledge and bail for the said Harry F. Turner, James F. Purvis, and Sterling Thomas, that if it shall happen that the said Harry F. Turner, James F. Purvis, and Sterling Thomas shall be convicted at the suit of the said Joseph C. Yates, in the plea aforesaid, then the said William Price consents, that as well the debt aforesaid, as all such damages, costs, and charges as shall be adjudged unto the said Joseph C. Yates in this behalf, shall be made of his body, lands, and tenements, and levied to the use of the said Joseph C. Yates, if it shall happen that the said Harry F. Turner, James F. Purvis, and Sterling Thomas shall not pay the said debt, damages, costs, and charges, or render themselves to the prison and custody of the marshal of the Maryland district aforesaid, on that occasion.

Rule plea.

And thereupon, on motion of the said Joseph C. Yates, by his attorney aforesaid, it is ruled by the court here that the said Harry F. Turner, James F. Purvis, and Sterling Thomas answer to the declaration aforesaid of the said Joseph C. Yates in the plea aforesaid, or judgment by the court here will be entered against them in default thereof.

And the said Harry F. Turner, James F. Purvis, and Sterling Thomas, by their attorney aforesaid, defend the force and injury when and so forth, and pray leave of the court here to imparle until the first Monday in November next, and then to answer to the declaration aforesaid of the said Joseph C. Yates in the plea aforesaid, and to them it is granted. The same day is given to the said Joseph C. Yates also.

At which said first Monday in November, in the year of our Lord one thousand eight hundred and fifty-one, to which said day the said Harry F. Turner, James F. Purvis, and Sterling Thomas had leave to imparle, and then to answer to the declaration aforesaid of the said Joseph C. Yates in the plea aforesaid, comes again into the circuit court here, as well the said Joseph C. Yates, by his attorney aforesaid, as the said Harry F. Turner, James F. Purvis, and Sterling Thomas, by their attorney aforesaid.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by order of the court here thereon, is further continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord one thousand eight hundred and fifty-two, comes again into the circuit court here as well the said Joseph C. Yates, by his attorney aforesaid, as the said Harry F. Turner, James F. Purvis, and Sterling Thomas, by Benjamin C. Barroll and Henry May, his attorneys.

And thereupon the said Harry F. Turner, James F. Purvis, and Sterling Thomas, by their attorneys aforesaid, file in the circuit court here the following pleas, to wit:

Pleas.

In circuit court, U. S., in and for the Maryland district.

November term, 1851.

HARRY F. TURNER, James F. Purvis, Sterling Thomas, } ats. JOSEPH C. YATES. }

1. And the said defendants, by Benj. C. Barroll, their attorney, come and defend the wrong and injury when, &c., and crave oyer of the said writing obligatory in the said declaration mentioned, and of the condition of the said writing obligatory, and they are read to them in these words.

(Herein before inserted at page 5.)

Which being read and heard, the defendants say, that the plaintiff ought not to have or maintain his aforesaid action thereof against them, because, they say, that the said Purvis and Thomas did, at all times after the making of the said writing obligatory, and the said condition thereof well and truly observe, perform, fulfil, and keep all and singular the articles, conditions, and agreements in the said condition mentioned, in all things therein contained, on their part to be observed and kept, according to the tenor and effect of said condition of said writing obligatory. And this the defendants are ready to verify. Wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action against them, &c.

2. And for further plea, (by leave of the court first had and obtained,) the defendants say, that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, because they say, that the said William H. F. Turner did not at all times after the making of the said writing obligatory, and the said condition thereof, well and truly pay to the said Yates all sums of money as were owing to the said Yates by the said William H. F. Turner, evidenced in the manner mentioned in the said writing obligatory, at the expiration of twelve months as mentioned in the condition of the said writing obligatory, at the district aforesaid. And this the defendants are ready to verify. Wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against them, &c.

3. And for a further plea (by leave of the court, &c.,) the defendants say, that the said plaintiff ought not to have or maintain his aforesaid action against them, because they say, that the said William H. F. Turner, in the said writing obligatory mentioned, did not owe the sum of money to the said plaintiff at the expiration of twelve months from the date of the said writing obligatory, to wit, twelve thousand dollars, with interest thereon, or any part thereof, as is alleged in the said declaration; and this the defendants pray may be inquired of by the country, &c.

4. And for a further plea (by leave of the court, &c.) the defendants say, that at the time of making said writing obligatory, to wit, on

the sixth day of November, in the year 1849, and lending and advancing the moneys therein mentioned, to wit, at the district aforesaid, the said Joseph C. Yates, the plaintiff in this action, was then and there acting as the agent of certain persons, to wit, Benjamin Charles T. Gray and Charles Gray, merchants, doing business in the city of London under the firm and style of B. Charles T. Gray and Son; and that the moneys so lent and advanced, as averred in the declaration, were the proper moneys of the said firm of B. Charles T. Gray and Son. And that in making such advances to said William H. F. Turner, it was the contract and agreement of said B. Charles T. Gray and Son, and of their said agent, Joseph C. Yates, the plaintiff acting for said Gray and Son, with said William H. F. Turner, to wit, at the district aforesaid, that the moneys so lent and advanced should be laid out and expended by said William H. F. Turner in purchasing and packing meats for the English market; and that said meats when so, packed for shipping, should be consigned and sent to the firm of B. Charles T. Gray and Son for sale, for the purpose of paying such advances, and until such advances should be fully paid; and that the proceeds of such sales should be placed to the credit and in extinguishment of such advances mentioned in said writing obligatory, the said advances to be evidenced in the manner mentioned in said writing obligatory. That said advances, after being received by said William H. F. Turner, as mentioned in the declaration, were laid out and expended by him in packing meats for the English market; which said meats were by him sent to England, and consigned to B. Charles [T.] Gray and Son, and were by them received and sold, and the proceeds, amounting to ten thousand dollars, were received by the said firm of B. Charles [T.] Gray and Son, and are now in their possession, due and owing to the said William H. F. Turner, and to that extent are in payment and satisfaction of the said advances made so under the said writing obligatory; and as to the amount over and above said moneys so received by said Gray and Son, these defendants aver, that the same hath been fully paid and satisfied to the said Gray and Son, and this the defendants are ready to verify; wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action against them, &c.

5. And for a further plea (by leave of the court, &c.,) the said defendants say, that the plaintiff ought not to have or maintain his aforesaid action against them, because they say that the said William H. F. Turner paid to the said plaintiff, on the seventh day of November, in the year eighteen hundred and fifty, (in the said declaration mentioned, the said sum of money,) together with interest thereon, which the said William ought to have paid to the said plaintiff according to the form and effect of the condition aforesaid, to wit, twelve thousand dollars, at the district aforesaid, and this they are ready to verify; wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action against them, &c.

B. C. BARROLL,
For defendants.

And the said Joseph C. Yates, by his attorney aforesaid, files in the circuit court here his replication to the aforesaid pleas in form following, to wit:

YATES
vs.
TURNER AND PURVIS
AND THOMAS.

Circuit court of the United States, for the Maryland district.

Replication—*Replication.*

1. And the said plaintiff, as to the plea by the said defendants first above pleaded says, that by reason of any thing therein alleged he ought not to be barred from having and maintaining his action aforesaid against them, because he says that the said Purvis and Thomas did not, at all times after the making of the said writing obligatory, and the said condition thereof, well and truly observe, perform, and fulfil, and keep, all and singular the articles, conditions, and agreements therein mentioned, in all things therein contained, on their part to be observed and kept, according to the tenor and effect of the same, in manner and form as the said defendants have thereof in their said first plea alleged; and this the plaintiff prays may be inquired of by the country, &c.

2. And as to the second plea by the said defendants pleaded, the plaintiff says, that by reason of any thing therein contained or alleged he ought not to be barred from having his said action against them, because he says that the said William H. F. Turner did not, at all times after the making of the said writing obligatory, and the condition thereof, well and truly pay to the said plaintiff all such sums of money as were owing to said plaintiff by said William, as evidenced in the manner mentioned in said writing obligatory, at the expiration of twelve months, as mentioned in the condition of said writing obligatory, in manner and form as the said defendants thereof in their said second plea alleged; and this the plaintiff prays may be inquired of by the country, &c.

3. And as to the third plea of said defendants, whereof they put themselves upon the country, the said plaintiff doth the like.

4. And as to the said fourth plea of the defendants the said plaintiff saith, that by reason of anything therein alleged he ought not to be barred from having or maintaining his said action against them, because he says that at the time of making the said writing obligatory, and lending and advancing the moneys therein mentioned, the said plaintiff was not then and there acting as agent of Benjamin Charles T. Gray and Charles Gray, merchants, doing business in the city of London, under the firm and style of B. Charles Gray & Son, and that the moneys so lent and advanced was not the proper moneys of the said firm of B. Charles Gray & Son; and that in making such advances as

were made to said William H. F. Turner, it was not the contract and agreement of said Gray and Son, and of the plaintiff as their agent with said William H. F. Turner, that the moneys so lent and advanced should be laid out and expended by said William H. F. Turner, in purchasing and packing meats for the English market; and that the said meats, when so packed for shipping, should be consigned to the firm of B. Charles Gray & Son for sale, for the purpose of paying off such advances, and until such advances should be fully paid, or that the proceeds of such sale should be placed to the credit and in extinguishment of such advances mentioned in the said writing obligatory, evidenced in the manner therein mentioned, in manner and form as in the said fourth plea is thereof alleged. And the said plaintiff further says, that said advances, after being received by said William H. F. Turner, were not laid out and expended by him in packing meats for the English market, and that no such said meats were by him sent to England, and consigned to B. Charles Gray & Son, or were by them received and sold; and that no proceeds thereof, amounting to $10,000, after all proper charges and expenses were first deducted, were received by Gray & Son, or now remain in their possession, due and owing to the said William H. F. Turner, or are to that extent in payment and satisfaction of the said advances so made to said William, under said writing obligatory, as by the said plea is thereof alleged. And the said plaintiff further says, that as to the amount, over and above the said moneys so alleged to have been received by said Gray & Son, the same has not been fully paid and satisfied to the said Gray & Son; and so the said plaintiff says, that the said moneys, so by him advanced to the said William H. F. Turner, according to the tenor of the said writing obligatory, and evidenced according to the mode therein provided, have not, nor has any part thereof been paid or satisfied to him in manner and form as the said defendants have thereof in their said plea alleged; and of this the plaintiff puts himself upon the country.

5. And as to the said fifth plea by the said defendants above pleaded the plaintiff says, that, by reason of anything therein alleged, he ought not to be barred from having and maintaining his action thereof against them, because he says that the said William H. F. Turner did not pay to the said plaintiff, on the 7th day of November, 1850, the said sum of money, to wit, $12,000, in the said declaration mentioned, together with all interest due thereon, which the said William ought to have paid to the said plaintiff, according to the form and requirement of the condition in the said writing obligatory aforesaid, in manner and form as the said defendants, in their said fifth plea, have thereof alleged; and of this the said plaintiff puts himself upon the country.

S. TEACKLE WALLIS,
Plaintiff's attorney.

And the said Harry F. Turner, James F. Purvis, and Sterling Thomas, by their attorneys aforesaid, file in the circuit court here the rejoinder in form following, to wit:

YATES
vs.
TURNER and Purvis and Thomas.

Circuit court of the United States, for the Maryland district.

Rejoinder.—(Rejoinder.)

The plaintiff in his replication first replied, having put himself upon the country, the defendants do the like, &c.

And as to the plaintiff's second replication, the plaintiff having therein put himself upon the country, the defendants do the like, &c.

And as to the plaintiff's fourth replication, having therein put himself upon the country, the defendants do the like, &c.

And as to the plaintiff's fifth replication, the plaintiff having therein put himself upon the country, the defendants do the like, &c.

B. C. BARROLL,
Defendants' Att'y.

Therefore let a jury thereon appear before the court here immediately, by whom and so forth, and who neither and so forth, to recognise and so forth, because as well and so forth; whereupon, for trying the issues aforesaid, it is ordered by the court here that twenty persons, from the pannel of petit jurors, returned to the court here by the marshal of the Maryland district aforesaid, be drawn by ballot; thereupon, the twenty persons being so drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists, thereupon, the remaining twelve persons being called come, to wit:

Jury.

William M. B. Wilson, Caleb Littig, Alfred Warfield, George C. Davis, Wm. B. Brooks, Fielder Darnell, Charles Jessop, Theodore Denny, George W. Duvall, Wm. B. Hammond, Wm. H. Johnson, and John W. Kennedy; who being empannelled and sworn to say the truth in the premises, upon their oath do say:

Verdict.

That the said Harry F. Turner, James F. Purvis, and Sterling Thomas, did not pay to the said Joseph C. Yates the said sum of six thousand dollars, current money, in the condition of the aforesaid writing obligatory mentioned, together with all interest due thereon, in manner and form as the aforesaid Joseph C. Yates within by replying hath alleged; and they find the sum of five thousand six hundred and

six dollars and twenty-two cents, current money, is really and justly due to the said Joseph C. Yates on the writing obligatory aforesaid.

Judgment.

Therefore it is considered by the court here, that the said Joseph C. Yates recover against the said Harry F. Turner, James F. Purvis, and Sterling Thomas, as well the sum of twelve thousand dollars, current money, his debt aforesaid, (to be released upon the payment of the said sum of five thousand six hundred and six dollars and twenty-two cents, current money, by the jurors aforesaid in form aforesaid found to be due, and interest on the same from the twenty-sixth day of April, eighteen hundred and fifty-two, until paid,) as also the sum of twenty-seven dollars and sixty-five cents by the court here, unto the said Joseph C. Yates, on his assent, adjudged for his *his* costs and charges by him about his suit in this behalf laid out and expended; and the said Harry F. Turner, James F. Purvis, and Sterling Thomas, in mercy, &c.

Before the jurors aforesaid withdrew from the bar of the court here, the said Harry F. Turner, James F. Purvis, and Sterling Thomas, by their attorneys aforesaid, tendered to the court here the following bills of exception, which were by the court here signed and sealed, and which are in form following, to wit:

Defendants' first exception. (Defendants' first exception.)

JOSEPH C. YATES
vs.
HARRY F. TURNER, James F. Purvis, and Sterling Thomas.

At the trial of this cause the plaintiff, to maintain the issues on his part joined, gave in evidence the bond following:

Bond.

Copy. Stamp.

Know all men by these presents, that we, Harry F. Turner, Sterling Thomas, and James F. Purvis, are held and firmly bound unto Joseph C. Yates in the full and just sum of twelve thousand dollars, current money, to be paid to the said Yates, his executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, and each of our *and each of our* heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this sixth day of November, in the year of our Lord one thousand eight hundred and forty-nine. Whereas the said Joseph C. Yates is about to lend and advance to William H. F. Turner the sum of twelve thousand dollars, in such sums, and at such times, as the said William may designate and appoint; which designa-

tion, and appointment, and advances, it is hereby agreed, shall be evidenced by notes drawn by the said William in favor of the said Harry F. Turner, agent, and by the latter endorsed, or by drafts drawn by the said William H. F. Turner in favor of the said Harry F. Turner, agent, on, and accepted or paid by, the said Yates, endorsed by said Harry F.

And whereas the said Harry F. Turner, Sterling Thomas, and James F. Purvis have agreed, as the consideration for the said loan, to secure to the said Yates the payment of the sum of six thousand dollars, and interest thereon, part of the said loan, and the said Harry F. Turner, with Robert Turner and Absalom Hancock, have entered into a bond similar to this, for the payment of the other six thousand dollars and interest: Now, the condition of the above obligation is such, that if the said William H. F. Turner, at the expiration of twelve months from the date hereof, shall well and truly pay to the said Yates, his executors, administrators, or assigns, all such sum or sums of money as may be owing to the said Yates by the said William H. F. Turner, evidenced as aforesaid, at the said expiration of the said twelve months; or in case the said William H. F. Turner should fail or omit to pay the said sum or sums of money at said time, if the said Sterling Thomas and James F. Purvis, or either of them, shall well and truly pay to the said Yates, his executors, administrators, or assigns, so much of said sum or sums of money as may then be owing, as shall amount to six thousand dollars and interest, in case so much be owing, with full legal interest thereon; or such sum or sums of money as may be owing, with interest thereon, in case the same should amount to less than six thousand dollars, then this obligation to be null and void; otherwise to remain in full force and virtue in law.

HARRY F. TURNER, [SEAL.]
STERLING THOMAS, [SEAL.]
JAS. F. PURVIS. [SEAL.]

Signed, sealed, and delivered in the presence of—
JOHN WM. MEDAIRY.

The execution of which, by the defendants, was admitted, together with the seven drafts following:

Draft 14th November, 1849, *for* $1,000.

CHATTANOOGA, *Nov.* 14, 1849.

Five days after sight pay to the order of H. F. Turner, agent, one thousand dollars, as advised.

Respectfully,
W. H. F. TURNER.

Mr. J. C. YEATS.

(Endorsed)—H. F. Turner.

DEAR SIR: This is for the [$]1,000 you let me have before I le[f]t. Hogs will raise a half cent higher here than I expected, owing to their

being bought up by the drovers to drive south. They all bring a high price there, owing to the raise in cotton. I shall commence killing by the 20th of this month. We are all well, and hope you are the same. Please forward me any letters that might be in trust, and oblige yours, &c.,

H. F. TURNER.

CHATTANOOGA, TENN., *Nov.* 15, 1849.

DEAR SIR: I have this day drawn on you, at five days' sight, for one thousand dollars, part of the loan you have agreed to advance me on security of the bond of H. F. Turner, Sterling Thomas, and J. F. Purvis, dated November 6, 1849, and the bond of H. F. Turner, Robert Turner, and Absal. Hancock, of the same date.

Respectfully, &c.,

W. H. F. TURNER.

J. C. YEATS, *E.*

CHATTANOOGA, *November* 15, 1849.

DEAR SIR: I have this day drawn on you, at 5 days' sight, for three thousand [dollars,] part of the loan you have agreed to advance me on security of the bond of H. F. Turner, Sterling Thomas, and James F. Purvis, dated November 6, 1849, and the bond of H. F. Turner, Robert Turner, and Absalom Hancock, of the same date.

Respectfully, &c.,

W. H. F. TURNER.

Draft—15th November, 1849, *for* $3000.

CHATTANOOGA, *November* 15, 1849.

Five days after sight pay to the order of H. F. Turner, agent, three thousand dollars, as advised.

Respectfully,

W. H. F. TURNER.

Mr. J. C. YEATS.

Accepted 23d November, 1849.

JOS. C. YATES.

Endorsed—H. F. Turner.

Pay J. Lounds, esq., cashier.

J. HENRY, *Cashier.*

2252. 1849. Wm. H. F. Turner's draft favor of H. F. Turner, $3000, settled December 1.

November 28. JOS. C. YATES.

CHATTANOOGA, *November* 20, 1849.

DEAR SIR: I have drawn on you to-day, at five days' sight, for one thousand dollars, part of the loan you have agreed to advance me on the

security of the bond of Harry F. Turner, Sterling Thomas, and James F. Purvis, date the 6th November, 1849, and the bond of H. F. Turner, Robert Turner, and Absalom Hancock, of the same date.

Respectfully, &c.,
W. H. F. TURNER.

Draft—20th November, 1849, $1000.

CHATTANOOGA, *November* 20, 1849.

Five days' after sight pay to the order of Harry F. Turner, agent, one thousand dollars, as advised.

W. H. F. TURNER.

Mr. J. C. YEATS.

Accepted 26th November, 1849.

JOS. C. YATES.

(Endorsed)—Harry F. Turner.

DEAR SIR: I have drawn on you to-day, at five days' sight, for three thousand dollars, part of the loan you have agreed to advance me on security of the bond of H. F. Turner, Sterling Thomas, and James F. Purvis, date November 6, 1849, and the bond of H. F. Turner, Robert Turner, and Absalom Hancock, of the same date.

Respectfully, &c.,
W. H. F. TURNER.

Draft—23d November, 1849, $3000.

CHATTANOOGA, *November* 23, 1849.

Five days after sight pay to the order of Harry F. Turner, agent, three thousand dollars, as advised.

Respectfully,
W. H. F. TURNER.

JOS. C. YEATS, *Baltimore, Md.*

Accepted 30th November, 1849. Due, 5—8 December.

(Endorsed)—Harry F. Turner.

Pay J. Lounds, cashier, or order.

J. HENRY, *Cashier.*
WINCHESTER, *Teller.*

CHATTANOOGA, *November* 24, 1849.

DEAR SIR: I have this day drawn on you, at five days' sight, for one thousand dollars, part of the loan you have agreed to advance me on the bond of Harry F. Turner, Sterling Thomas, and James F. Purvis, date 6 November, 1849, and the bond of Harry F. Turner, Robert Turner, and Absalom Hancock, of the same date.

Respectfully, &c.,
W. H. F. TURNER.

J. C. YEATS, ESQ., *Baltimore.*

Draft—24th November, 1849, $1000.

CHATTANOOGA, *November* 24, 1849.

Five days after sight pay to the order of Harry F. Turner, agent, one thousand dollars, as advised.

Respectfully,
W. H. F. TURNER.

Accepted. Baltimore, 1st December, 1849.
JOS. C. YATES.

(Endorsed)—Harry F. Turner.

Pay to the order of J. Loney, esq., cashier of the Farmers and Merchants' Bank, Baltimore, or order.

S. T. ROBINSON, *Cashier.*

CHATTANOOGA, *November 30th*, 1849.

DEAR SIR: I have drawn on you to-day, at five days' sight, two drafts, one for two thousand dollars, and one for one thousand dollars, part of the loan you have agreed to advance me on security of the bond of Harry F. Turner, Sterling Thomas, and James F. Purvis, date 6 November, 1849, and the bond of Harry F. Turner, Robert Turner, and Absalom Hancock, of the same date.

Respectfully, &c.,
W. H. F. TURNER.

J. C. YEATS, *Baltimore.*

Draft—30th November, 1849, $1000.

CHATTANOOGA, *November* 30, 1849.

$1000.

Five days after sight pay to the order of Harry F. Turner, agent, one thousand dollars, as advised.

W. H. F. TURNER.

Mr. J. C. YEATS, *Baltimore, Md.*

Accepted 10th December, 1849. December 15—18.

Endorsed—Harry F. Turner.

Draft.—30th November, 1849, $2,000.

CHATTANOOGA, *November* 30, 1849.

Five days after sight pay to the order of Harry F. Turner, agent, two thousand dollars as advised.

W. H. F. TURNER.

Mr. J. C. YEATS, *Baltimore, Md.*

Accepted, 11th December, 1849.

December 16, 1819. (Endorsed:) Harry F. Turner; pay J. C. Lounds, esq., cashier, or order.

J. HENRY, *Cashier*,
WINCHESTER, *Teller*.

Drawn in pursuance of said bond upon the plaintiff, the handwriting of all the respective parties to which was admitted by the defendants, together with the payment of the same by the plaintiff at the times respectively noted at the foot of each thereof, and to the amount of $12,000 in all. The plaintiff here rested his case.

Evidence of Wilkins, witness for the defendants.

Whereupon the defendants, to maintain the issues upon their part joined, gave in evidence, by Wilkins, a legal and competent witness, that he went out to Chattanooga in the fall of 1849 alone; that he was employed and sent out by Harry F. Turner who was then in Baltimore, to assist in slaughtering and packing of meat; that when he arrived there he found William H. F. Turner at Chattanooga engaged in putting up the necessary buildings for the business of slaughtering hogs and packing meats; that James Turner, the son of Harry, was also there; that witness remained there about five months, and assisted in the business; that while there about 4,000 hogs were slaughtered by said William H. F. Turner, and packed in boxes to the extent of 700 boxes, with the name of William H. F. Turner marked upon the same with stencil mark, in legible characters, on the outside of the boxes, and also the letters A. L. P., signifying "Alpine *bascon*," with the weight of the meat contained in each box; and that in the management of the business at Chattanooga the said William acted as the principal, and Harry as the agent of the said William; and that during the time the said witness remained at Chattanooga, there were packed for the English market, by the said William H. F. Turner, marked as aforesaid, seven hundred boxes prime singed bacon, which were sent by him to the railroad depot, to be transmitted from Chattanooga to Charleston.

Evidence of James S. Turner, a witness for defendants.

And further proved by James S. Turner, a legal and competent witness, that he is the son of Harry F. Turner, and went out with his father about the 6th day of November, 1849, to Chattanooga; that his brother, William, was then out there, and had been so for a considerable time previous; that he found his said brother engaged in the erection of proper buildings for slaughtering and packing hogs, in which business the said William had some experience and knowledge; that his father had been there before, some time before; that his father assisted his brother in the business, acting as overseer; saw that the packing was well done; that some 4,000 hogs were slaughtered and

packed for the English markets by his brother William; that said hogs were packed in about 1,300 or 1,400 boxes; that all said boxes were marked in stencil with the name William H. F. Turner plainly thereon, also the letters A. L. P., intended to signify Alpine bacon, the brand his brother had selected for his bacon; that the weights were also marked on said boxes, and that there was no other name or mark thereon; that the weight of the first lot sent to Charleston, to wit, 700 boxes, was 183,000 lbs. nett; this was the first time William had packed for himself.

And he also proved that at the time the said 700 boxes were sent to the railroad depot at Chattanooga, he, the witness, made out an invoice of the same, and transmitted it to the plaintiff by mail, witness having put the parcel in the post office himself, at Chattanooga, directed in his own handwriting to Joseph C. Yates, Baltimore, Maryland, which it is admitted was at that time his place of business and residence; that said invoice contained and showed the true and correct weight of the said meat; that his father did not pack any meat for himself that season.

That Harry F. Turner had been previously engaged in packing bacon for the English market, and had despatched a large quantity there the previous year; that these 700 boxes were intended for that market, and were despatched to B. Charles T. Gray & Son, of London.

The defendants then, by their counsel, called upon the plaintiff to produce the invoice spoken of by the witness, under the agreement filed.

Agreement.

CIRCUIT COURT, UNITED STATES,
Maryland district.

YATES
vs.
TURNER and others.

It is agreed between the plaintiff and defendants in this cause, that either party shall produce upon notice at the trial table any papers which may be in his possession, subject to all proper legal exceptions as to their admissibility or effect as evidence; and that handwriting, where genuine, shall be admitted without proof.

S. T. WALLIS, *for plaintiff,*
BENJ. C. BARROLL, *for defendants.*

But the plaintiff stated that said invoice was not in his possession; and the defendants then offered to prove by the same witness the contents of the said invoice, and particularly to prove thereby that said invoice notified to the plaintiff on its face that 700 boxes of meat were shipped by said William H. F. Turner, and were his property; but this evidence was objected to by plaintiff's counsel, and the objection

sustained by the court, who was of opinion that the presumption was that the invoice must have gone to the destination of the meat, and that the consignees were competent witnesses to produce the original invoice, who refused to permit the same to go to the jury; to which refusal the defendant excepted, and prayed the court to sign and seal this first bill of exceptions, which is done accordingly, this 23d day of April, in the year 1852.

JOHN GLENN. [SEAL.]

Defendants' second exception.

Second exception.

YATES
vs.
TURNER and others.

Upon the further trial of this cause, and after the evidence contained in the first bill of exceptions, which is made part hereof, had been given, the defendants, further to support the issues on their part joined, gave in evidence the following papers, viz:

Jos. C. Yates to W. H. F. Turner, 6th Nov., 1849.

BALTO., *6th Nov.*, 1849.

W. H. F. TURNER.

DEAR SIR: Your drafts on me, at stated periods, will be duly met, to the extent of twelve thousand dollars, and when it is necessary for a further credit, you will give me early notice.

Yours, &c.,

JOS. C. YATES.

Your drafts must be made payable to Harry F. Turner, and by him endorsed as agent.

W. H. F. TURNER, esq.,
Chattanooga, Tennessee.

Jos. C. Yates to H. F. Turner, 6th Dec., 1849.

BALTIMORE, *6th Dec'r*, 1849.

HARRY F. TURNER, esq., (agent.)

DEAR SIR: I have been expecting to hear from you what progress you are making in packing, and what time you will be enabled to be sending off your first shipment, that I may give Messrs. Gray & Son some idea when they may look for a consignment. I have written them several times, but have been unable to say more than I learned you had commenced killing. Please let me hear from you all particulars, that I may communicate them to Gray & Son. You will see

by the circular sent you by Mr. Turner, the prospect for prices in London, and I shall be quite delighted if you come out with a handsome profit this season; but I much fear if you do not get your hogs much under $3 nett, which I fear you have been purchasing at, with the great certainty of losing largely by the uncertainty of the weather where you are quartered, and the other difficulties and expenses which you will necessarily encounter, I would predict loss to you; and I should have been much better pleased to have seen you remain and carried on here, where $4\frac{1}{4}$ nett would have been cheaper when you take into account the difference of expenses. Hogs are ruling here a. $4 a. $4\frac{1}{8}$, and will, contrary to your ideas, be lower still. Let me entreat you as a friend not to pack for packing sake, unless you see some certainty of saving yourself at least. Be not too sanguine, and go slowly along; look to the state of the weather, which I learn is most uncertain, and has ruined every one that has heretofore attempted to pack in that section of country. See that nothing tainted goes to our friends.

I have paid your drafts for $9000, which you followed up very soon after the other. You remember Messrs. Gray & Son requested they may be spread over several packets, but never mind now; after deducting stamp bills, $7 50, on $12,000, and 1 p. c. for drawing, selling, and paying your drafts, $120, there will be of the $12,000, which you can draw for when you require it, but don't draw until you actually require it, and then at 10 days, if you can, for I want to give as much time to Messrs. Gray [& Son] as I can. You have no doubt noticed that exchange has gone down to $8\frac{1}{4}$ p. c. 60 days on London. Goff and Kough have packed 50,000 hogs; principal part cost $4. Some few in first instance cost them $4 62, but it was a very small lot, and they have despatched one small cargo, and are now shipping. All the packers are now fairly at it. Let me hear from you by return mail, so that I may write Gray & Son on Monday by the packet. Wishing you every success. In haste.

I am, dear sir, yours, very truly,

JOS. C. YATES.

To paid your draft - - - - - -	$1,000	
Ditto - - - - - -	3,000	
Ditto - - - - - -	1,000	
Ditto - - - - - -	3,000	
Ditto - - - - - -	1,000	
		$9,000
Stamp bills exchange - - - - -		7 50
1 per cent. on $12,000, drawing, paying, &c. -		120
Balance due for you to draw for - - -		2,872 50
Amount to be advanced - - - -		$12,000 00

The handwriting of both of which was admitted by the plaintiff; and

also gave in evidence the contract between plaintiff and W. H. F. Turner and H. F. Turner, agent.

Contract, 14th Nov., 1849.

CHATTANOOGA, TENN., *Nov.* 14, 1849.

Mr. JOS. C. YATES.

DEAR SIR: In consideration of the advance of twelve thousand dollars made me by you for the purpose of packing meats for the English market, I hereby bind myself to make my whole shipments, of whatever kind they may be, to your friends in London or Liverpool, Messrs. B. Charles T. Gray & Son, for the entire season or longer, till such advance shall have been paid off, together with any other that I may be permitted to draw for.

I am, dear sir, your most obed't serv't,

W. H. F. TURNER.

I agree to see the above carried out in good faith, and bind myself for the due fulfilment of it.

HARRY F. TURNER, *agent of* W. H. F. TURNER.

The signatures of William and Harry being admitted, and it being further admitted that said paper was in the handwriting of the clerk of plaintiff, and that the same was written at the request and by the direction of the plaintiff, and to have been addressed to the plaintiff by himself in his own proper handwriting, and sent by the plaintiff to Chattanooga to be executed by said Harry and William, who were then at that place, and who did then and there sign it, and return it to the plaintiff at Baltimore, where he resided and did business.

Evidence of James Turner in second exception.

The defendants further proved, by James S. Turner, that Harry F. Turner, during the whole period that William H. F. Turner remained at Chattanooga, or that Harry remained there, was not engaged in killing or packing meats on his individual account, or any other manner than as the agent of William.

Evidence of Robert Turner.

And further proved, by Robert Turner, that he was one of the parties sureties for William H. F. Turner, on the other bond referred to in the bond on which the present action is founded, and that he had several conversations with the plaintiff upon the subject of the business transacted at Chattanooga, and that plaintiff told him that H. F. Turner had written to him about 700 boxes of meat which had been packed for the English market, and wanted to draw on the same to the

amount of two-thirds of its value; that said plaintiff at first hesitated as to whether he would permit such a draft, but made a calculation as to what the said meat was worth, and estimated its value at $15,000, and then concluded H. F. Turner might draw. Plaintiff, subsequently, stated to witness, that Harry F. Turner had drawn on said meat, and that said 700 boxes of meat had been shipped to Messrs. B. Charles T. Gray & Son, at London, and that he, the plaintiff, had received account sales of the same from the Messrs. Gray, and that there was a great loss on the meat, and that it would be a ruinous business, but that the current market prices had been obtained; and the witness further stated, that in all said conversations it was understood between the plaintiff and the witness, that Harry F. Turner was acting as the agent of William H. F. Turner, and that said meat had been shipped to the Messrs. Gray & Son by H. F. Turner, as the known agent of William H. F. Turner, and that said plaintiff never intimated to the contrary.

Evidence of Mr. Cassard for defendants.

And the defendants further proved by Mr. Cassard, a competent witness, that prime singed bacon of American cure, in March to June, 1850, ranged at from 35 to 40 shillings per cwt., in London; and after this period the prices declined; and that four or five per cent. was the usual rate of commission charged in London for making sales; that freight from New York to London in the spring of 1850, ranged from 25 to 40 shillings per ton.

Evidence of Mr. Howell for defendants.

And defendants proved by Mr. Howell, a competent witness, that on the 7th March, 1850, the plaintiff effected insurance in Baltimore upon 700 boxes of meat from Charleston to New York for amount of $14,000. And it was admitted that Harry F. Turner applied for the benefit of the insolvent laws of Maryland on the 29th of September, 1849, and obtained his final discharge about five months thereafter. And here the defendants rested their case.

And the plaintiff, further to maintain the issues on his part joined, offered in evidence the following papers, viz., (here insert letter of Harry F. Turner to Gray & Son, 5th February, 1850, same to same, 27th February, 1850; same to plaintiff, 18th February, 1850, with undated postscript sent therein; same to same, 11th February, 1850, bill of lading dated 11th March, 1850, therein contained; same to same, 14th February, 1850; draft, 15th March, 1850, for $5,733; letter dated 10th March, post marked 10th April, 1850; bill of lading, April 9th, 1850, therein contained; letter of Gadsden & Co., dated 11th April, 1850; April 18th, 1850, with bill of lading; April 3d, 1850; April 30th, 1850; 10th May, 1850; and two account sales.

Letter from H. F. Turner to Gray & Son, offered by plaintiff.

CHATTANOOGA, TENNESSEE, *February* 5, 1850.

Messrs. B. CHARLES T. GRAY & SON.

GENTLEMEN: Your favor of the 28th of December is just come to hand and contents noticed. I should *of* written to you before this, but being as I am so far from home and in a new country, and not having the conveniences necessary to operate to any extent, I had to first make preparation for killing; besides not knowing to what extent I would do business, I thought I would wate untill I made a shipment, as a letter would be of but little use unless it had a invoice to accompany it. I am now making a shipment to Charleston of new singed bacon of as good quality, I think, as ever crossed the Atlantic, and will continue shipping until all is started for you; it will be out of my power to send any beef this year, having no means of putting it up in this country this season; next year I will have the necessary to do a large and profitable business, what shall all be at your disposal, and I think advantage.

Your kindness to me through our mutual friend, J. C. Yeats, shall not, nor cannot, be forgotten by me; I am a mine is the first business ever done of the kind in this country, and I should not of ever *ever* come here had not things looked well, and I am quite sure this can bee a very profitable business, done here for the English market, when the railroad is compleated to this place; if the road had been finished as they gave me assurance it would long since, I would of made shipment to you; in about 3 months the road will be compleated and nothing to prevent any shipment from this place to Charleston. All my hogs are of the best quality, prime, and good, not being driven distance. I am going to put up the necessary buildings the coming summer, in order to pack beef and pork as well as singed bacon another season. I fear I will not bee abell to ship direct to London from Charleston, but I will doe the best I can in the matter.

I remain, your obedient servant,

HARRY F. TURNER.

Letter from H. F. Turner to Gray & Son, 27th February, 1850, offered by plaintiff.

CHARLESTON, S. C., *February* 27, 1850.

Messrs. B. CHARLES T. GRAY & SON.

GENTLEMEN: I have been requested by J. C. Yeates, esq., to give you the reasons why I have not made any shipments of meat ere this. I will endeavor to comply with his request.

The place where I have operated this season is some 500 miles from Charleston; the nearest seaport, I could possibly ship to, was Charleston, via railroad. Before I commenced business, I had every assurance

from the company the road would be completed to Chattanooga, Tennessee, where I have been operating. In this I have been disappointed, as there is a tunnel of about 1800 feet, which, up to the present time, is unfinished, causing every thing to be hauled over a high mountain; owing to this, the transportation is slow, and the road is not only difficult but rather dangerous; add to this, the high price of cotton has drawn a large amount at this juncture of the road, in order to get quick despatch for that article; this circumstance also has kept my meat back, and necessarily limited my operations for this season, (my funds being exhausted and not being able to draw,) on what I had ready for shipment. Had the road been completed, long since you should have heard from me, and been in possession of my shipments.

I do hope, sirs, you will not charge me with folly in selecting that wild country for operations; I am still of the opinion, indeed I know, there is more money to be made there, than any other point in the United States. Cattle and hogs are in great abundance, and of the very best kind and quality; and if you could have confidence in letting out your means to be employed another season there, I am satisfied the result would be highly pleasing and satisfactory to you.

I say this much to you, to show that if I had had the necessary buildings and capital, with the railroad in full play, I could and would have shipped to you a large amount of provisions this season, as it is, I will not be able to ship more [than] from 12 to 14 hundred boxes of bacon, I think of a superior quality, or about 340,000 lbs. I purpose this summer to get in operation a cooper shop, and intend erecting a set of buildings, rendering pans, &c., in order that good may come out of this seeming evil.

I have been greatly troubled, not only on your account, but on Mr. J. C. Yeates's account, who feels more in this matter than perhaps you do yourselves, being that to him you look, and in him you have confided; be assured I have not escaped his notice, although I have done the very best I could under the circumstances. I am waiting here in order to receive my bacon, as it comes on the cars from Chattanooga, when 500 boxes have arrived, (which will be in a few days,) as already near 400 boxes have reached me, I will ship and advise you of the same in order for you to insure. I fear I will have to ship from here to New York, thence to London, as every vessel here is engaged to Liverpool; you will please let me have your advices from time to time, and oblige your obedient servant,

HARRY F. TURNER.

Letter from H. F. Turner to J. C. Yates, 18th February, 1850, offered by plaintiff.

CHARLESTON, *February* 18, 1850.

J. C. YEATS, esq.

I am in this place waiting the arrival of my bacon from Chattanooga; my first invoices will be from 6 to 7 hundred boxes of as good an

article I think as possibly could be put up; on this I will draw on you at 60 days for 4¾ cents per lb. My next invois will bee perhaps the same amount; on this I may not draw aney as the first I think will bee anuf to pay what I owe, if it is not I will make another small draw. If I had of been in posession of funds, or could of got my meat of, I would of done mutch more this season; however it is the opening of a field for a heavy business, and that I think a most profeitabel one. It was intirely out of my power this season to do more than I have dun under all the disadvantages witch I have labored, as allreddy I have created a debt, or got a credit for some 8 or 9 thousand dollars, witch I shall pay when I draw on you. I would of liked it werry mutch could I of hacked beef; in this I was prevented not having room, hands, tierses nor money; another I will endever to have all the necessaries to operate on and bee in time to make my purchases; I would like to no what freight is per ton to London from Baltimore; perhaps I may have to ship to you or to New York; I am trying to get a vessel for London here, as yet I have faled, as all goe to Liverpool; it could be shiped there for about 28 shillings per ton; they tell mee here the cost of a bale of cotton from Liverpool to London is about 50 cents; if so a box of meat ought not to be more than 37½ cents; Robert informs mee that you say it will cost mee 1½ shillings per cwt. from Liverpool to London; this will not do; it must go some other way. You will plese let mee here from you; direct to the care of James Gadsden & Co., S. C., and oblige yours, HARRY F. TURNER.

Postscript not dated.

J. C. YEATS, esq.

DR. SIR: After sending you an answer to your letter, I received a despatch from R. Turner stating you would honour my draft; would you bee good anuff to let mee draw by sending you the bills of laden signed by the captain of the vessel by home I ship to New York; in doing this it will enable mee to goe back to Chattanooga and send the bills of laden with invois from there, as there I will get the money on the draft in the same way I got all the rest. At the same time I will direct the bills of laden signed in New York to be forwarded on to you, and by the time one arives the other will also, that is, by the time the draft arives from Chattanooga with the bills of laden witch I will send, the one from New York will also; you perseve at once my reason for this, it will enable mee to get home some 20 days sooner, and also save some 50 dollars of expense of my staying here, and above all enable me to pay what I owe to strangers who are anchously wating my arrival there; freight from New York is 25s. per tons grose; freight from here to New York is about 50 cents per box, 75 cents insurence per hundred dollars, which would make to London in all about 40s. I think this is the best I can do, as there is no vesal here that will goe to London, and I cannot get it shiped to Liverpool for less than 30s.; this with the freight from Liverpool to London on railroad, would make at least

50 or 52 shillings from Baltimore about the same. I send you a letter for the Messrs. Grays, if it suites please send it on; it is about in substance all I can say, unless I was to goe into particulars that would fill a quier of paper. Yours, truly,

HARRY F. TURNER.

Please let me know, by telegraf, wether this arrangement will do; if my letter to Grays wants eny thing, let R. Turner coppy, and ad sutch words, if in keeping with the rest.

Letter from H. F. Turner to J. C. Yates, 11th February, (March,) 1850, offered by plaintiff.

CHARLESTON, S. C., *Feb.* (*March*) 11, 1850.

J. C. YEATS, esq.

DEAR SIR: Enclosed you have bill of laden for 546 boxes bacon. I consigned to George Buckley, esq., New York, directions for to have the same shiped to B. Charles T. Gray & Sons, London; also to forward you bill of laden of the same. There will bee 154 boxes more to make up the first invoice; if the brig will waite a few days it will bee put on board of her; if not, it will bee shiped on some other vessel, eather direct for London or to New York, as above. One of the bils laden is kept by James Gadsden & Co., one to the captin, one sent to you, one to Gray & Sons. I shall draw, as directed by you, $10 50 per box, at 90 days, from Chattanooga, and indevor to get all the ballance as speadley as posibell.

Your obedient servant,

HARRY F. TURNER.

Nett weight 700 boxes, 183,018; averaging—

700)183018(261
1400

4301
4200

1018
700

318 and over.

Bill of lading, 546 boxes bacon, 11th March, 1850, offered by plaintiff.

Shipped in good order and well conditioned, by James Gadsden & Co., on board the good brig called the Clinton, whereof Andrews is master for the present voyage, now lying in the port of Charleston, and bound for New York, five hundred and forty-six boxes
A. L. P. bacon, being marked and numbered as in the margin, and are to be delivered, in like good order and well conditioned,

at the aforesaid port of New York, (the dangers of the seas only excepted,) unto George Bulkley, esq., or to his assigns, he or they paying freight for the said boxes six cents per foot, with primage and average accustomed.

In witness whereof the master or agent of the said vessel hath affirmed to three bills of lading, all of this tenor and date; one of which being accomplished, the others to stand void.

Dated at Charleston, the 11th day of March, 1850.

J. ANDREWS.

Letter from H. F. Turner to J. C. Yates, 14th February, (March,) 1850, offered by plaintiff.

CHATTANOOGA, *Feb.* (*March*) 14, 1850.

J. C. YEATS, esq.

DEAR SIR: I have this day drawn on you, at 90 days, for five thousand seven hundred and thirty-three dollars, $5,733, being ten dollars fifty cents per box on 546 boxes singed bacon; I shall, in like maner, draw on you for the same amount per box if I should requier any more funds. Before you recive this letter, you will receve the *the* invois for 700 boxes, 183,018 pounds, also bills laden for 546 boxes. The ballance of the boxes will be *will be* shiped as soon as posibell.

Yours, truly,

HARRY F. TURNER.

Draft 15th March, 1850, $5,733, offered by plaintiff.

$5,733. CHATTANOOGA, *March* 15, 1850.

Ninety days after date, of this my only bill of this tenor and date, pay to J. Henry, cashier, or order, five thousand seven hundred and thirty-three dollars, at the Merchants' Bank of Baltimore, and charge the same to account, as advised.

HARRY F. TURNER.

To J. C. YATES, esq., *Baltimore, Md.*
Due 13–16 June.

[Endorsed on the face.]

Accepted, Baltimore, 22d March, 1850.

JOS. C. YATES.

Endorsed.

Pay J. Lounds, esq., cashier, or order.

J. HENRY, *Cashier,*
WINCHESTER, *Teller.*

Letter from H. F. Turner to J. C. Yates, 14th March, (April,) 1850, offered by the plaintiff.

CHATTANOOGA, *March* (*April*) 10, 1850.

J. C. YATES, esq.

DEAR SIR: I have this day drawn on you for twenty-eight hundred

and fifty-six dollars, at 90 days. This amount is more than I ought of drawn on the 154 boxes of the first invois of 700 boxes, and should not of dun so but that it is jest the amount I owe in this place, and would of had to wate here perhaps two weeks longer had I not of dun so. The 254 boxes shiped on board the Fairfield to New York, before this, you have advices from James Gadsden & Co.; the ballance of my meat, 666 boxes, have all left here for Charleston, except 55 boxes, wich will leave to-day; on them I shall draw for the freight wich I owe on the railroad, and enuf to pay my bill of nales and saltpeater in Baltimore.

Of course I mean I will draw at Charleston, when I ship the meat, as the others. I hope you will see in this matter I have dun right, and accept my sinser thanks for your favers to mee.

HARRY F. TURNER.

Bill of lading, 154 *boxes bacon*, 9*th April*, 1850, *offered by plaintiff.*

Shipped in good order and well conditioned, by James Gadsden & Co., on board the good ship called the Fairfield, whereof Loveland is master for the present voyage, now lying in the port of Charleston, and bound to New York; to say, one hundred and fifty-four boxes bacon, being marked and numbered as in the margin, and are to be delivered, in like good order and well conditioned, at the aforesaid port of New York, (the dangers of the seas only excepted,) unto George Bulkley, or to his assigns, he or they paying freight for the said boxes six cents per foot, with primage and average accustomed.

A. L. P.

In witness whereof, the master or agent of the said vessel hath affirmed to three bills of lading, all of this tenor and date; one of which being accomplished, the others to stand void.

Dated at Charleston, the 9th day of April, 1850.

SAM'L LOVELAND.

Letter from Jas. Gadsden & Co. to J. C. Yates, 11*th April*, 1850, *offerred by plaintiff.*

CHARLESTON, *April* 11*th*, 1850.

JOS. C. YATES, esq., *Baltimore.*

DEAR SIR: Enclosed please find bill of lading for 154 boxes bacon, per ship Fairfield, to New York, and to be forwarded to London to B. Charles T. Gray & Sons, on account Mr. H. F. Turner. We have instructed Mr. Bulkley to send you bill of lading as soon as shipped; he has sent us bill of lading for 546 boxes per "Switzerland," and said that he would send you one also. Please acknowledge receipt of this, and oblige yours,

Respectfully,

JAS. GADSDEN & CO.

Letter from J. Gadsden & Co. to Jos. C. Yates, 18th April, 1850, offered by plaintiff.

CHARLESTON, S. C., *18th April*, 1850.

JOS. C. YATES, esq., *Baltimore, Md.*

DEAR SIR: We are in receipt of yours of 15th instant, acknowledging receipt of ours covering bill of lading of 154 boxes bacon shipped you per "Fairfield," on account of Mr. H. F. Turner, and requesting bill of lading for five hundred and forty-six boxes bacon per ship "Switzerland," which we hold to be forwarded to you; this we we have the pleasure to do, as you will find herein enclosed.

Your most obedient servants,

JAMES GADSDEN & CO.

Bill of lading, 3d of April, 1850, 546 *boxes bacon, offered by plaintiff.*

Shipped in good order and well condition [by] George Bulkley, agent for Jas. Gadsden & Co., on board the ship called the Switzerland, whereof ——— Hubbard is master, now lying in the port of New York, and bound for London; to say, five hundred and forty-six boxes bacon, estimated 169,806 lbs., gross, being marked and numbered as in the margin, and are to be delivered in like good order and condition at the aforesaid port of London, free and (the dangers of the sea only excepted) unto B. Charles T. Gray & Sons, or to their assigns, he or they paying freight for the said bacon thirty shillings sterling per ton gross weight, to be weighed in London, and expenses amounting to eighty-eight pounds nine shillings and four pence sterling to be paid in London, with 5 per ct. primage and average accustomed. In witness whereof, the master or purser of the said vessel hath affirmed to 5 bills of lading, all of this tenor and date; one of which being accomplished, the others to stand void. Dated in New York, 3d day of April, 1850.

A. L. P.
£88 9 2 charges.

S. C. HUBBARD.

Letter from H. F. Turner to J. C. Yates, 30th April, 1850, *offered by plaintiff.*

APREAL 30, 1850.

J. C. YATES, esq.

DEAR SIR: Owing to indisposition and forgetfulness I did not call on you yesterday, neather did I right to England; perhaps it is well anuf I did not, as my son has returned from Charleston, and states that James Gadsden & Co. has shipped all the bacon, 666 boxes, to their friends in London in order to save themselves, as they have made themselves responsible for freight and other matters; of corse before I left Charleston, I told them if you did not except, I would ship through them in order to raise funds; I send you this statement this morning in order that you may know the facts in the mater before you act further.

Yours,

HARRY F. TURNER.

I have ritten to them requesting to have the meat to B. C. T. Gray & Sons.

Letter from J. Gadsden & Co., to J. C. Yates, 10th May, 1850, offered by plaintiff.

CHARLESTON, *May 10th*, 1850.

JOS. C. YATES, esq.

DEAR SIR: We are in receipt of your favor of 6th instant, and we presume from its tenor that you are not well advised as to our agency with Mr. Turner. But for our interposition, the first 700 boxes shipped through to your correspondents in London, could not have been received from the railroad. We have become responsible for the freight as the boxes of bacon came forward, until we were involved to a large amount, without anything in hands. The balance of the bacon as it came forward was retained by the railroad, and as there was some difficulty as to freight and condition of the packages, they could not be got possession of without our agency and responsibility; we were then responsible for the freight on the 700 boxes, which in our confidence had gone forward to your correspondents in London.

We would cheerfully have arranged for the freight of the balance of the bacon, if we could have been covered by a draft on B. C. T. Gray & Sons, but we had no authority to draw, or any assurance that our draft would have been honored had we drawn. In this dilemma, originating in a desire to aid Mr. Turner in his difficulties, we, with his consent, sent forward the bacon to our friends, with no motive of superseding you in your relations with him, and with no other object than to be covered for the responsibilities we had assumed. If now, with the consent of Mr. Turner, you are disposed to direct your house in London to arrange with our correspondents for the payment of the bill [of] £1,601 11s. 4d. drawn against them, and any other charges customary on such transactions, we will cheerfully give orders to transfer the shipment to them. It is likewise understood that you will arrange the acceptance of Turner's draft, predicated on the previous shipment of bacon through you, and which is represented in part by the bills of lading herewith enclosed. We feel under some obligation to see that this draft is protected, as the intelligence that you would do so was forwarded through our house to the Georgia bank and holder of the draft.

Respectfully,

JAS. GADSDEN & CO.

Sales of 154 *boxes bacon, "Prince Albert," Meyer, New York, for account of Harry F. Turner, esq.*

Sales of 154 boxes bacon, offered by plaintiff.

1850.					
June 3	Sold at 2 mos., due 6 August.				
		cwt. qr. lbs.			
	C, 1 box bacon, weight nt.....	2 0 13 at 31s.	£3 5 6		
Aug. 15	Sold at 2 mos., due 25th Oct.				
	116 boxes, weighing.....245 1 13				
	Less beamage 2 lbs. p. 3b..... 1 1 24				
	243 3 17 at 31s.		317 1 6		
" 31	Sold at 2 mos., due 3d Nov.				
	D, 17 boxes, weighing..... 54 1 10				
	Less beamage less 2 los. per 3 b. 1 8				
	54 0 2 at 25s.		67 10 6		
June 28	Sold at 2 mos., due 31 Aug.				
	E, 20 boxes, weighing..... 48 1 21				
	Less beamage..... 1 4				
	48 0 17 at 30s.		72 4 7		
					460 1 2
	154 boxes, due by average 18 October, 1850.				
	Charges.				
April 30	Insurance from New York to London on £550 20s. 0d.....	5 10 0			
	Policy duty, &c.....	3 8			
		5 13 8			
	Interest to 18 Oct., 171 ds.....	2 6			
			5 16 2		
June 4	Warehousing entry.....		3 6		
" 29	Freight at N. York on 449c 1 13 at 30s. per ton.....	33 14 0			
	Pge.....	1 13 9			
		35 7 9			
	Charges in New York.....	23 15 9			
		59 3 6			
	Interest to 18 October, 111 ds.....	18 0			
			66 1 2		460 2 1
Sept. 11	Landing, wharfage, &c., on 154 boxes bacon at 1s. 7d.....	12 3 10			
	Opening for inspection, and recoopering	2 1 0			
	Unpacking, weighing, &c., on 126.....	9 9 0			
	Weighing 2 gross.....	1 0			
	Rent.....	11 5 0			
		34 19 10			
	Less 10 per ct.....	3 10 0			
		31 9 10			
	Interest to 18 October, 37 ds.....	3 2	31 13 0		
	Stamps 13s., fire insurance 8s., postage and petty expenses 9s. 2d.....		1 10 2		
	Commissions 4 per ct.....		18 8 0		117 12 4
	Nett proceeds, due 18 October, '50		.....		£342 9 9

London, September 12, 1850, errors excepted.

B. CHARLES T. GRAY & SONS.

Sales of 546 boxes bacon, "Switzerland," Hubbard, at New York, for account of Harry F. Turner, esq.

Sales of 546 boxes, offered by plaintiff.

1850.						
June 15	Sold at 2 mos., due 18th Aug.					
		cwt.	qr.	lbs.		
	A, 10 boxes sizable bacon, w'ing.	21	3	6		
	Less beamage 2 lb. per 3 b.....	0	0	14		
		21	2	20, at 32s.		
					£ 34 13 8	
July 17	Sold at 2 mos., due 20th Sept.					
	50 boxes, weighing.....	104	3	16		
	Less beamage.....	0	2	14		
		104	1	2, at 28s.		
					145 19 6	
22	Sold at 2 mos., due 25th Sept.					
	20 boxes weighing.....	44	1	14		
	Less beamage.....	0	1	2		
		44	0	2, at 28s.		
					61 12 6	
26	Sold at 2 mos., due 29th Sept.					
	10 boxes, weighing.....	23	0	6		
	Less beamage.....	0	0	16		
		22	3	18, at 28s.		
					32 1 6	
29	Sold at 2 mos., due 2d Oct.					
	25 boxes, weighing.....	54	1	27		
	Less beamage.....	0	1	8		
		54	0	19, at 28s.		
					75 16 9	
29	Sold at 2 mos., due 2d Oct.					
	30 boxes, weighing.....	65	0	27		
	Less beamage.....	0	1	16		
		64	3	11, at 28s.		
					90 15 9	
Aug. 8	Sold at 3 mos., due 11th Nov.					
	20 boxes, weighing.....	43	3	1		
	Less beamage.....	0	1	1		
		43	2	0, at 28s.		
					60 18 0	
					£ 501 17 8	
					501 17 8	
1850.						
Aug. 8	Sold at 4 mos., due 11th Dec.					
	50 boxes, weighing.....	105	2	23		
	Less beamage.....	0	2	14		
		105	0	9, at 28s.		
					147 2 3	
15	Sold at 2 mos., due 18th Oct.					
	43 boxes, weighing.....	93	0	12		
	Less beamage.....	0	2	6		
		92	2	6, at 28s.		
					139 11 6	778 11 5

Sales of 546 *horses*—Continued.

			cwt.	qr.	lbs.				
July 30	Sold at 2 mos., due 2d Nov.								
	B. 43 boxes, packed into bales,								
	(heavy bacon,) weighing.....	118	0	1					
	Less beamage.....	0	2	23					
		117	1	6, at 26s.					
						.....		152	9 10
May 30	Sold at 2 mos., due 2d Aug.								
	C. 46 boxes sizable bacon, w'ing	100	3	11					
	Less beamage.....	0	2	11					
		100	1	0, at 32s					
						160	8 0		
June 3	Sold at 2 mos., due 6th Aug.								
	138 c. 184 boxes, weighing.....	300	1	25					
	Less beamage.....	1	3	4					
		298	2	21, at 31s.					
						462	19 3	623	7 3
Sept. 12	Sold at 2 mos., due 15th Nov.								
	D. 41 boxes heavy bacon, packed								
	into bales, weighing.....	113	0	23					
	Less beamage.....	0	2	20					
		112	2	3, 25s. 6d.					
						.....		143	9 6
June 6	E. 20 bxs. sizable bacon, w'ing.	48	3	24					
	Less beamage.....	0	1	4					
		48	2	20, at 31s.					
						.....		75	9 0
	546, due by average, 22d Sept.....					.....		£1,773	7 0
	Amount brought forward.....					.....		£1,773	7 0
1850.	*Charges.*								
April 30	Insurance from New York to London,								
	at £1950, premium 20 per cent.....		19	10	0				
	Policy duty, 8 per cent.....			13	0				
			20	3	0				
	Interest to 22d September, 145 days..			7	11				
						£20	10 11		
May 6	Warehousing entry.....						3 6		
25	Freight at New York on gross weight,								
	1602, 2 at 30 s. per ton.....		120	3	0				
	P. per cent.....		6	0	2				
			126	3	2				
	Charges in New York p. B L.....		88	9	4				
			214	12	6				
	Interest to 22d September, 120 days...		3	10	6				
						218	3 0		
Sept. 11	Landing, wharfage, and housing 546								
	boxes, at 1s. 7d.....		43	4	6				
	Unpacking, weighing, clearing, re-								
	weighing, resalting and repacking								
	15 cases at 4s.....		3	0	0				
	Opening for inspection and recooper-								
	ing 163 at 1s.		8	3	0				

Sales of 546 *boxes*—Continued.

Unpacking, weighing, repacking, &c., 87 at 1s. 6d	6	10	6			
Unpacking 84 cases, cleaning, weighing, resalting, and repacking into 84 bales, at 2s. 6d	10	10	0			
Opening to inspect 15 bales		7	6			
Averaging 9 bales		6	9			
Unpacking, weighing, repacking, and coopering 18 cases, at 1s. 6d	1	7	0			
Rent	30	15	10			
	104	5	1			
Less 10 per cent	10	8	6			
	93	16	7			
Interest to 22d September, 11 days		2	9			
				93	19	4
Stamps 57s., fire insurance 33s				4	10	0
Postages and petty expenses				2	2	0
Commission and brokerage 4 per cent				70	18	8
					410	7 5
Nett proceeds due 22d September, '50					£1,362	19 7

London, September 12, 1850. Errors excepted.

B. CHARLES T. GRAY & SON.

All of which were admitted to be in the handwriting of the respective parties.

And it was admitted that the draft aforesaid for $5,733 was accepted and paid at maturity by plaintiff.

(And the said plaintiff offered the foregoing papers in evidence, accompanied with the statement that they were so offered only to prove a separate contract made by Harry with said plaintiff, (in connexion with other proofs to be offered by him, said plaintiff,) and Gray & Son, known to the defendants when they executed the bond sued on in this case, to ship pork and meat to said Gray & Son in his individual capacity, and not as agent, William, and to receive from said Gray & Son, or said Yates, advances thereupon. And that the shipments proven, defendants of the said 700 boxes of meat to Gray & Son, were made by said Harry in his individual capacity, of his own meats, and not as agent of William. And that the advance of $5,733, made by said Yates, was bona fide made by him to said Harry in his individual capacity in pursuance of such separate and distinct contract, and not as agent of William, and were transmitted to, and sold and accounted for by, said Gray & Son, bona fide, as the individual property of said Harry, and not as his property as agent of William.)

But the defendants objected to each of said papers, as the same was offered in evidence, and to all of them, upon the ground that the same were not admissible in evidence for the purpose offered, and objected to the same being read to the jury; but the court overruled each and all of said objections, and allowed the plaintiff's counsel to read the same to the jury; to which overruling and allowance by the court the

defendants excepted, and prayed the court to sign and seal this their second bill of exceptions, which is accordingly done this 23d day of April, 1852.

JOHN GLENN. [SEAL.]

Defendants' 3d exception.—Defendants' 3d exceptions.

YATES
vs.
TURNER and others.

Upon the further trial of the cause, and after the evidence stated in the previous bill of exception (and now made part hereof) had been given, the plaintiff, for the purpose of following up the testimony introduced by him as in the second bill of exceptions is stated, and in order to prove that there was between the plaintiff and B. Charles T. Gray & Son and Harry F. Turner, in the individual capacity of said Harry, a separate and distinct agreement for the packing of meat by said Harry, and its shipment by him to B. Charles T. Gray & Son, of London, and *and* the advance of money by the plaintiff on such shipments; which agreement was altogether disconnected with the agreement between the plaintiff and William H. F. Turner, and Harry F. Turner as agent of said William; and that the defendants, at the time of the execution of the bond in suit, had full notice of the existence of such agreement, and that the same would be carried out; and that the defendants entered into the said bond with the knowledge of such agreement and its contemplated execution; and not for the purpose of varying said bond, or the terms thereof offered in evidence by John H. Thomas, esquire.

Evidence of John H. Thomas, esq., witness for plaintiff.

That he was the attorney of the plaintiff when the bond in suit was prepared, and did prepare the same; that the sum of $12,000 thereby secured was to have been advanced originally to the said Harry F. Turner, in his individual capacity, by the plaintiff, under an agreement therefor between the said Harry F. and the plaintiff, and bonds to secure the same, and to be executed by the defendants and the sureties on the other bond referred to in the bond in suit, had been already prepared by the witness to the knowledge of the defendants; that at this stage of the transaction the defendants, accompanied by William J. Ward, esquire, came to the office of the witness, and the said Ward, in their presence, said to the witness, that the said Harry F. Turner was much embarrassed in his circumstances, and that consequently, and to save all difficulty with said Harry's creditors which might flow from such embarrassment, he, the said Ward, had advised that the $12,000 intended to be advanced to the said Harry F. Turner should be advanced to *to* his son William H. F. Turner; that said Harry should act as the agent of said William H. F.

Turner in regard to the same, and that the bonds should be altered, or new ones prepared accordingly; that the witness objected to the said change, and, for the reasons of his objection, alleged to the said Ward, in the presence of the defendants, first, that the said William H. F. Turner was not (as the witness believed) the principal, or Harry F. Turner, his agent in the said transaction, and that difficulties would, in all probability, arise from the bond being thus founded on a false statement of facts; and secondly, that there was an existing agreement between the plaintiff and Harry F. Turner, individually, that over and above the $12,000 about to be advanced on the bond, the plaintiff should make to the said Harry F., individually, other advances on shipments, of meat which the said Harry F. was to make to Messrs. B. Charles T. Gray & Son, of London; that, notwithstanding the advance of the $12,000 on the bonds, the said agreement with Harry F., for other advances on shipments, would still be carried out; and that he, the witness feared, in case the change proposed should be adopted, that there might arise the precise difficulty raised in this cause, viz., as to whether the proceeds of shipments which might be made should be credited to Harry F. Turner, and in payment of advances to him individually, or whether they should be credited to the advances proposed to be made to said William H. F. Turner, through said Harry F. as his agent; that the said Ward, in the presence of the defendants, assured the witness that William H. F. Turner would be really the principal in regard to the loan of the said $12,000, and said Harry F. only his agent; and that the other difficulty apprehended by the witness might readily be avoided; that the witness remaining unconvinced, the interview closed unsatisfactorily; that the defendants afterwards came to the office of the witness, and requested him to have another interview with Mr. Ward on the subject, with a view to the removal, if possible, of the difficulties stated; that the witness assented; whereupon the defendants, or some of them, went in search of Mr. Ward, and returned with him to the office of the witness; that the witness again, in the presence of the defendants, reiterated his objections aforesaid, and insisted particularly on the confusion that might arise from the existence of the independent agreement, which he again stated did exist, and would be carried out, between said Harry F. Turner, individually, and the plaintiff, for the shipment of meat and advances thereon; and the witness and Mr. Ward being still unable to agree, they determined to leave the matter to the decision of St. George W. Teackle, esq.; that they accordingly called on Mr. Teackle, in whose presence, and in that of Mr. Ward, the witness repeated his objections as aforesaid, to which Mr. Ward replied as before; whereupon Mr. Teackle, adopting as correct the statement of Mr. Ward, as to the fact that William H. F. Turner was to act as principal in reference to the said loan of $12,000, determined that the witness was wrong in his first objection; and as to the second objection of the witness, growing out of the co-existence of the two contracts, said to the witness that all difficulty might be prevented thereabout by the plaintiff's keeping separate accounts against

Harry F. Turner, agent, and Harry F. Turner, individually, and charging advances, and crediting shipments, accordingly; that the witness being thus overruled, prepared the bonds in their present form, and handed them to Mr. Ward, who returned them to him duly executed; that the last mentioned conversation with Mr. Ward, in Mr. Teackle's office and presence, took place out of the presence of the defendants and of William H. F. Turner, who was then in Chattanooga, but was had with said Ward in consequence of the request of the defendants as aforesaid, to confer further with said Ward after the first mentioned unsatisfactory interview.

Cross examination.

The said witness being cross examined stated, that the defendants did not, so far as witness remembers, assent, in express terms, to what took place in their presence, but that they made no objection whatever thereto; that there was no understanding at any of the said interviews that Harry F. Turner was to take William H. F. Turner's meat, and drawn on it as his own property.

Third exception.

Objections to Wallis's statement. Thomas's testimony.

Ward assured witness that William was really the principal, and Harry was only the agent, in the transaction; and that Harry was merely to oversee; and that, as Harry was in very embarrassed circumstances, some difficulty might arise with his creditors.

Thomas said, that the securities did not give their assent to it in distinct terms; and Thomas says distinctly, that it was not understood that Harry could take William's meat and draw on it as of his own property, or the meat purchased with William's money.

This is incorporated in third exception, (signed.)

To all of which evidence the defendants objected, but the court overruled their objection, and allowed the evidence to go to the jury; to which overruling and allowance the defendants excepted, and prayed the court to sign and seal this their bill of exceptions, which is done this 23d day of April, 1852.

J. GLENN. [SEAL.]

Defendants' fourth exception. (Fourth exception.)

YATES
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After the evidence stated in the previous bills of exception, and now made part hereof, had been given, the plaintiff, further to maintain the issue on his part, gave in evidence to the jury that the sum of one per cent. upon advances made on shipments to London, was a usual and

proper charge, according to the custom of merchants in Baltimore, and that the said plaintiff claimed and charged in account the sum of $\$57\frac{33}{100}$, being one per cent. on the advance of $5,733 made by him, as shown in the evidence.

And the defendants objected to the admissibility of the proof, but the court overruled their said objection, and permitted the evidence to go to the jury, to which overruling and permission the defendants excepted, and prayed the court to sign and seal this, their fourth bill of exceptions, which is accordingly done, this 23d day of April, 1852.

JOHN GLENN. [SEAL.]

Defendants' 5th exception.

Defendants' 5th exception.

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vs.
TURNER and others.

Upon the further trial of the cause, and after the evidence set forth in the previous bills of exception, and now made a part hereof, had been given, the defendants gave in evidence the following letters of the plaintiff, admitted to be genuine. (Here insert plaintiff's letter of February 23d, 1850, to Harry F. Turner; and plaintiff's letter of October 10, 1850, to Purvis and Thomas.)

Letter from J. C. Yates to H. F. Turner, 23d February, 1850, offered by defendants.

(Per mail.) BALTIMORE, *23d February*, 1850.

H. F. TURNER, esq.

DEAR SIR: I should have written you ere this, but being unable to do [so] from severe indisposition, and am still unable to do so, but make an exertion to reply to your letter of 15th inst.

I have to remark, that I feel deep annoyance at your goods not having gone forward ere this. Your several letters to your son-in-law stated that they would have been shipped from week to week as your letters were written, and behold they are still as far off of it as in December last. You could not certainly have thought that Messrs. Gray ever intended to advance you $12,000 unless they believed your shipments would have been in time to have met the bills; and strange to say, you have never written them a line on [the] subject, until a letter you sent Mr. Turner to forward them about a fortnight since, and as this contained nothing that would allay their uneasiness, but rather increase it, I have not sent it forward. I some time since gave Mr. Turner a memorandum of what information I required you to send them, which you have never noticed, and I must now inform you that I shall not honor any further draft till I get from you what number boxes bacon and lard, in fact your whole stock on hand, to be sent to Mr. Gray, and at what

time the whole will be shipped. We must have no disappointment in the time named, for already your letters have led me to make such misstatements to Messrs. Gray as I am ashamed of, and their great dissatisfaction in the matter has given me much pain. You know for your sake I overstepped their authority, and the return you make in placing me in such a position as you have, is a poor one.

On receipt of this write a letter to Messrs. Gray, stating number boxes bacon, quantity of lard, &c., forming your stock to go to them, then they will see what they have to depend upon. The 5,000 hogs, independent of the lot purchased since at $2½, as formerly advised both to Mr. Turner and myself, will likely form some 4,000 boxes, and will enable you to take up a vessel for London; at any rate you had better ship on best terms you can; freights are up at New York as well as here, and I am now paying 35 s. to London per ton, and 7 s. for ins. Ships are not to be had here just now; only one up for London, and several wanted for Liverpool; freight to London from Liverpool you will have to pay 1 s. per cwt., so you can make your calculation; *at* ship at once, on best terms you can make; freights I think will be higher, and for God's sake get something off to them, and remember you [to send] me the letter to them, giving amount of your stock, so that it may be here on Saturday to go by the steamer. I wrote them I would get this information from you and send it them; if you write them on receipt of this, there will be plenty time to reach here for next steamer.

I find, notwithstanding you could not get bacon to the Charleston market, you managed to get your lard there, and instead of carrying our your agreement of shipping it, as you know you bound yourself to do, I find you sold it; this is meeting one's engagements with a vengeance. In all your communications to your son-in-law as well as myself, you seem to have evaded giving a statement of your stock, tho' we so frequently asked it; your silence on these matters has alarmed all your friends. After making your first shipment, and no other vessel is offering to follow it up directly, would it not be better to send your stuff here, as any longer delay will make it too late to sell it in the English market; do the best you can.

I am, dear sir, yours, very respectfully,

JOS. C. YATES.

Letter from J. C. Yates to Jas. F. Purvis and S. Thomas, 10th October, 1850.

BALTIMORE, *10th October,* 1850.

JAMES F. PURVIS and STERLING THOMAS, esquires.

DEAR SIRS: On adjusting the accounts of Mr. Turner, which were handed to him some 10 days since, there appears a balance due which he has not arranged, and as securities for him I call on you for settlement in accordance with your bond.

I am, dear sirs, your most obed't serv't,

JOS. C. YATES.

And then repeated the offer made by them as set forth in the defendants' first exception, to give parol evidence of the contents of the invoice mentioned and referred to in said first exception, as having been sent by the witness, James Turner, to the plaintiff. Whereupon the plaintiff offered to prove by his clerk that the said invoice had been duly forwarded by the plaintiff to B. Charles T. Gray and Son, soon after its receipt by the plaintiff, and that the same was not, nor was any copy thereof, in the plaintiff's possession, to the knowledge of the said clerk, who had charge of the plaintiff's papers in the plaintiff's possession since said invoice was forwarded as aforesaid to B. Charles T. Gray and Son. But the defendants insisted, that notwithstanding the same might be, as by the plaintiff, offered to be proven, the parol evidence so as aforesaid by the defendants offered should nevertheless go to the jury; to which the plaintiff objected, alleging that the same was in itself inadmissible; and that not being rebutting evidence it could not, even if admissible in itself, be properly received at that stage of the cause; and the court refused to let the said parol evidence go to the jury; to which refusal the defendants excepted, and prayed the court to sign and seal this their bill of exceptions; which is accordingly done this 24th day of April, 1852.

JOHN GLENN. [SEAL.]

Defendants' 6th exception.

YATES vs. TURNER, &c. } 6th exception.

Evidence of W. J. Ward, witness for defendants.

After the evidence mentioned in the previous bills of exception, and now made part hereof, had been given, the defendants further gave in evidence, by William J. Ward, esq., that he acted as the attorney of Harry F. Turner in the preparation of the bond in controversy, and had several interviews with John H. Thomas, esq., in respect thereto. That witness was employed by and acted for Harry F. Turner alone in the transaction; that witness was not employed by, and did not act for, any other person but Harry F. Turner; that defendants were present at some of the interviews between Thomas and himself.

Witness further states that he recollected no other or outside agreement by which Harry [F. Turner] was to be permitted to draw on plaintiff or Gray and Son, otherwise than as stipulated in the bonds herein before mentioned; that there was no other agreement made at or about the time of the execution of the bond between Harry and plaintiff to which the defendants assented. Witness does not recollect the point which was submitted to Mr. Teacle, but knows that the bond was the result to which all parties arrived after the various interviews and consultations; that witness explained to Mr. Thomas that

William was the principal in the business, and that Harry was merely to act as his agent.

Evidence of Robert Turner.

And the defendants further proved, by the aforesaid Robert Turner, that "what Mr. Thomas had sworn to on the stand as a witness," he had never heard before; that the distinct understanding was among all parties at the time of the execution of the bond, and the conversations held in relation to the bonds, that the meats which were to be purchased with the $12,000 were to be sold by Gray & Son, and the proceeds to go in liquidation of the bonds. Witness never heard of the outside agreement sworn to by the witness, John H. Thomas, esq. Witness recollects that one objection urged to the bond first prepared by Mr. Thomas was, that it made each party responsible for the entire amount, $12,000. The objection came from Sterling Thomas.

Evidence of A. Hancock, witness for defendants.

And further proved, by Absalom Hancock, party to the second bond, that he was present at three interviews when the bonds were discussed, prior to making the bonds in their present form, being the interviews spoken of by the witness, John H. Thomas. That he, the witness, never heard the language sworn to by Mr. J. H. Thomas as having been used on those occasions, and that he never so understood the arrangement. The calculation was, that by spring the whole indebtedness of William would be paid off. Witness never heard any conversation in which it was asserted or intimated that Harry was to have the right to draw beyond the $12,000, as stipulated in the bonds.

Evidence of Mr. Teackle, witness for plaintiff.

The plaintiff then gave evidence, by Mr. Teackle, that John H. Thomas and William J. Ward came to his office to get him to determine the difference between them as to the manner in which the bonds aforementioned should be drawn, no other person being present. That Mr. Thomas represented the plaintiff, and Mr. Ward represented the other parties to the bond. That Mr. Thomas stated to witness that, among other reasons for the view he took of the matter, *that* there was an agreement of the plaintiff with Harry F. Turner individually, that said Harry should pack meats belonging to himself, and ship the same to London to the Messrs. Gray & Son, upon which the plaintiff was to make advances, and that said Thomas feared there might be confusion in the accounts if the $12,000 contemplated to be loaned to William should be made, and William's meat shipped by Harry as his agent to the Messrs. Gray & Son. But said Ward insisted that no such confusion could arise if separate accounts were kept of William's meat and Harry's individual meat. And with this suggestion the witness advised

that the bonds should be drawn in their present form, and they were accordingly so drawn.

The plaintiff then further offered in evidence, and for the purpose before stated in the second exception, the following papers: (letter of Turner to Gray, 24 August, 1849; Gray to Turner, 21st September, 1849; Turner to Gray, 22d October, 1849;) here insert.

Letter from H. F. Turner to Gray & Son, 24th Aug., 1849, *offered by plaintiff.*

Per Hibernia.

BALTIMORE, *Aug.* 24, 1849.

Messrs. B. CHAS. T. GRAY & SONS.

GENTLEMEN: I take this early opportunity to inform you that I feel it to be my duty to offer to you the coming season my shipments, provided you think well of it. My shipment, the last season, to England, in beef, pork, singed bacon, and lard, has been about $200,000. It may or may not reach that amount the coming season—depending on circumstances. As you [are] aware, it will take a considerable amount of capital. I beg leave again to say to you that I would like to have a credit with you of about $12,000, about the first of October; and if required I will give you, through your agent, Jos. C. Yates, esq., ample security in real estate for the same. If you think well of this, I will make all my shipments to you, and draw upon you for the usual amount on the shipments that Messrs. Allen & Anderson allows his correspondents, you holding all the margins until you are paid for the advances. I feel this a duty I owe to you for your kindness to me last season, which came too late, owing to other arrangements. I ask no more of you than I can obtain from several of the very best houses in London. My shipments this season were to the following houses: Allen & Anderson, London; Gibbs, Bright & Co., Liverpool; James McHenry, and others. There is a gentleman in Baltimore at this time, who called upon me yesterday, by the name of Turner, of the firm of John Buck & Co., soliciting shipments. Messrs. Allen & Anderson inform me that my name as a provision merchant stands No. 1. By giving your early attention to this, you will oblige

Yours, respectfully,
HARRY F. TURNER.

Letter from Gray & Son to H. F. Turner, 21st Sept., 1849, *offered by plaintiff.*

LONDON, *September* 21, 1849.

DEAR SIR: Your letter of the 24th August reached us on the 18th instant. We thank you for the proposal therein made to send your shipments to us, and we shall be happy to extend to you the credit named at the commencement of the season, with the understanding, of

course, that the same is be covered by consignments. We shall write to our friend, Mr. Yates, by this opportunity, requesting him to act for us in the promotion of your arrangements, and we hope that these will be so far advanced as to enable you to immediately commence shipping. In the first instance, we should like your drafts to be made at 90 days, so as to give us more time to realize; and in every case we should receive bill of lading and orders to insure in ample time to cover the risk before the vessel leaves. Your experience of our market has probably proved to you that only the best articles will sell readily; indeed, of late so many inferior importations have taken place from U. S., that even good names are viewed with suspicion.

We are satisfied that proper pains bestowed upon the packing of beef will prove in the end greatly advantageous to the shipper, and should we recommend your confining your attention to procuring and packing only such as you can depend on. Our house at Liverpool having all the facility for selling to best advantage, will see all justice done you, and by having your produce in the hands of one only, you will thus avoid competing with your own brand in the market.

We remain, dear sir, your faithful servants,

(Signed) B. C. T. GRAY & SON.

Letter from H. F. Turner to Gray & Son, 22d October, 1849, offered by plaintiff.

BALTIMORE, *October* 22*d*, 1849.

Messrs. B. CHAS. T. GRAY & SON.

GENTLEMEN: I have your kind favor of the 21st September, and note its contents. I have just returned from Tennessee, where I intend to operate the coming season. The pigs in this region are of the very best quality, and will be killed on the spot, without being driven a long distance, which of course will be to my advantage. I purpose to fill all my bladders with lard, and the balance to put in tierces or barrels for your market. The arrangement shall be made the coming week with J. C. Yates, esq., to suit both parties. I shall draw on you for ⅔ of each shipment, or 5 cents per lb., leaving the margin of all my shipments in your hands, until you are reimbursed for the advance of 12,000 dollars. I will comply with your request to draw on you at 90 days instead of 60, which is the usual time we draw at. What beef and pork I pack shall be of the very best quality, as I see the great necessity of such a course. I shall confine myself to your houses in London and Liverpool, believing it to be the best course, and that you will do for me the best you possibly can. Remaining yours, respectfully,

I am, gentlemen, yours, truly,

HARRY F. TURNER.

But the defendants objected to the testimony of Mr. Teackle, and also to the letters above mentioned, and contended that the said evidence of Mr. Teackle and the said letters were inadmissible and illegal

testimony. But the court overruled each and all of said objections, and allowed the testimony of Mr. Teackle and of the letters to go to the jury; to which overruling and allowance the defendants excepted, and prayed the court to sign and seal this 6th bill of exceptions; which is done accordingly this 24th day of April, 1852.

JOHN GLENN. [SEAL.]

Defendants' 7th exception.

Defendants' 7th exception.

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The evidence stated in the foregoing bills of exception, which is made part hereof, having been given, and the testimony closed on behalf of both plaintiff and defendants, the plaintiff prayed the court to instruct the jury as follows:

Plaintiff's prayer.

If the jury believe from the evidence, that independently of the contract between the plaintiff and William H. F. Turner, and Harry F. Turner as his agent, there was a separate and distinct agreement between the plaintiff or the Messrs. Gray and Harry F. Turner, in his own right and not as agent, for the shipment of meats by the said Harry F. Turner to England, on the one side, and the advance of money upon the said shipments on the other; and if the jury further believe that the shipments by the Switzerland and Prince Albert, and the advance by said Yates thereon, which were given in evidence, were made in pursuance and execution of the said separate agreement with said Harry F. Turner in his own right, then the defendants are not entitled to be credited with any portion of the proceeds of said shipments, but the plaintiff is entitled to recover in this action as if no such shipments had been made.

And the defendants prayed the court to give the following instructions to the jury:

Defendants' prayers.

1. If the jury find from the evidence that Harry F. Turner was the agent of William H. F. Turner in packing and shipping meats for the English market, and this was known to the plaintiff, and shall further find that the agreement of the 14th November, 1849, was written at the instance and by direction of the plaintiff, and addressed in his handwriting, and sent by him to be signed by the said W. H. F. Turner, and Harry F. Turner as his agent, and was so signed by them and returned to the plaintiff, and afterwards that the meat of said Wm.

H. F. Turner was packed as aforesaid and sent to the Messrs. Gray, of London, and was by them sold and the money received therefor, then the defendants, Thomas and Purvis, are entitled to be credited on the obligation sued on in this case to the extent of said sale and receipt of proceeds, after deducting all proper charges therefrom.

2. If the jury believe from the evidence that Wm. H. Ward, esq., was not the attorney of the defendants Purvis and Thomas, and did not so represent himself in their presence, or with their knowledge, at the time of the conversation testified to by J. H. Thomas, esq., they are not bound by his acts or declarations.

But the court rejected the whole of the said prayers of plaintiff and defendants, and gave to the jury instead thereof the following instructions:

Court's instructions.

Instructions of the court.

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1. If the jury find that W. J. Ward, esq., was, in his communication with the plaintiff's counsel, accompanied by the defendants, and that defendants referred plaintiff's counsel to said Ward to adjust and settle the differences between them, that said defendants are bound by the acts and declarations of said Ward, although he was only retained by H. F. Turner as such, unless such limitations of retainer were stated to plaintiff or his counsel.

2. If the jury believe that defendants executed and delivered the bond now sued upon, and that Harry F. Turner in the transactions, after occurring, in relation to the bacon at Chattanooga, was either the principal in such transactions, or acted as agent of Wm. H. F. Turner, then defendants are entitled only to be credited for one-half the nett amount of the shipments of bacon made by them, after deducting from the proceeds of sales of such bacon all liens thereon, including in such liens the draft of $5,733 drawn as an advance on such bacon.

To which instructions of the court, and the rejection of the defendants' prayers, the defendants asked leave to except, and prayed the court to sign and seal this their seventh bill of exceptions, which is accordingly done this 24th day of April, 1852.

JOHN GLENN. [SEAL.]

Defendants' 8th exception.

Defendants' 8th exception.

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Upon the further trial of this case, after the instructions prayed for

had been argued, and the court had decided to refuse the same, and had granted the two instructions set out on the defendants' seventh exception, the defendants' counsel having prepared out of court their exceptions thereto, and to the other points of law ruled by the court and excepted to during this trial, immediately after the court had so decided, and before the bailiff to the jury was sworn, or the jury had withdrawn from the bar of the court, presented their said exceptions, and moved the court to sign and seal the same before the verdict should be rendered; but the court refused so to do, and refused to consider the said exceptions, or either of them, under the rule of this court, November 25th, 1846, at the November term thereof.

Rule, 25th November, 1846.

November term, 1846.

Ordered, that whenever either party shall except to any opinion given by the court, the exception shall be stated to the court before the bailiff to the jury is sworn, and the bill of exceptions afterwards drawn out in writing, and presented to the court during the term at which it is reserved, otherwise it will not be sealed by the court. November 25th, 1846.

And decided not to consider or receive the same until after the verdict should be rendered, and the jury discharged from the case; to which refusal of the court, and decision, the defendants by their counsel except, and pray the court to sign and seal this their final exception, which is accordingly done this 26th day of April, 1852.

JOHN GLENN. [SEAL.]

And now here, at this day, to wit, the twenty-sixth day of April, in the year of our Lord one thousand eight hundred and fifty-two, the said Harry F. Turner, James F. Purvis, and Sterling Thomas, by their attorneys aforesaid, produced to the circuit court here the writ of the United States of America, for the correcting of errors of and upon the premises, commanding the record and proceedings aforesaid of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next; which said writ of error is in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the judges of the circuit court of the United States, for the fourth circuit, in and for the Maryland district, greeting:

Because in the record and proceedings, as also in the rendition of judgment of a plea which is in the said circuit court, before [SEAL.] you, or some of you, between Joseph C. Yates, plaintiff, and Harry F. Turner, James F. Purvis, and Sterling Thomas,

defendants, a manifest error hath happened, to the great damage of the said Harry F. Turner, James F. Purvis, and Sterling Thomas, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ; so that you have the same at Washington on the first Monday in December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable R. B. Taney, chief justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and fifty-one.

Issued 26th April, 1852. THOS. SPICER,
Clerk circuit court.

In pursuance whereof, and according to the form and effect of the act of Congress in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, together with the said writ of error, are hereby transmitted to the said Supreme Court accordingly.

Writ of error bond.

Know all men by these presents, that we, Harry F. Turner, James F. Purvis, Sterling Thomas, William Price, and George Holland, of the city of Baltimore, are held and firmly bound unto Joseph C. Yates, of the city of Baltimore, and State of Maryland, in the just and full sum of twelve thousand dollars, lawful money of the United States, to be paid to the said Joseph C. Yates, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made and done, we hereby bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this twenty-fifth day of August, in the year of our Lord one thousand eight hundred and fifty-two.

Whereas at a circuit court of the United States, for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore on the first Monday in April, in the year of our Lord one thousand eight hundred and fifty-two, the said Joseph C. Yates, by the judgment of the same court, recovered against the said Harry F. Turner, James F. Purvis, and Sterling Thomas, as well the sum of twelve thousand dollars, current money, a certain debt, (to be released on the payment of the sum of five thousand six hundred and six dollars and twenty-two cents, current money, with interest on the same from the twenty-sixth day of April, eighteen hundred and fifty-two,) as the sum

of twenty-seven dollars and sixty-five cents, for his costs and charges by him about his suit in that behalf laid out and expended.

And whereas the said Harry F. Turner, James F. Purvis, and Sterling Thomas have sued out the writ of the United States of America, for the correcting of errors, and a citation directed to the said Joseph C. Yates, citing and admonishing him to be and appear at a Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next, to show cause, if any there be, why the judgment aforesaid, so as aforesaid rendered *rendered*, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf. Now the condition of the above obligation is such, that if the said Harry F. Turner, James F. Purvis, and Sterling Thomas, shall well and truly prosecute with effect their said writ of error, and pay to the said Joseph C. Yates, his heirs, executors, administrators, or assigns, the amount of the said judgment adjudged to him by the circuit court aforesaid, and also all such damages, costs, and charges as shall be awarded to him by the said Supreme Court, in case they shall fail to make good their said plea, then the above obligation to be void and of none effect, otherwise to be and remain in full force and virtue in law.

HARRY F. TURNER, [SEAL.]
JAS. F. PURVIS, [SEAL.]
STERLING THOMAS, [SEAL.]
WILLIAM PRICE, [SEAL.]
GEORGE HOLLAND. [SEAL.]

Signed, sealed, and delivered in presence of—
THO. SPICER.

Approved: R. B. TANEY.

The United States of America, to Joseph C. Yates, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next, pursuant to a writ of [error] filed in the clerk's office of the circuit court of the United States, for the fourth circuit, in and for Maryland district, wherein Harry F. Turner, James F. Purvis, and Sterling Thomas are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Harry F. Turner, James F. Purvis, and Sterling Thomas, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Given under my hand and seal, at the city of Baltimore, in the district aforesaid, this 13th day of November, in the year of our Lord one thousand eight hundred and fifty-two.

R. B. TANEY. [SEAL.]

In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid, I hereunto subscribe my name, and affix the seal of the said circuit court, this thirteenth day of November, in the year of our Lord one thousand eight hundred and fifty-two.

[SEAL.]

THO. SPICER,
Clerk circuit court.